

WILLIAMS PRODUCTION COMPANY

IBLA 97-453

Decided April 19, 2001

Appeal from a decision of the Deputy Commissioner of Indian Affairs upholding a Minerals Management Service order requiring a Tribal lessee to repay recoupments of advance rentals not taken in accordance with Tribal procedures. MMS-94-0702-IND.

Decision reversed; MMS Order vacated.

1. Indians: Mineral Resources: Oil and Gas: Tribal Leases--Oil and Gas Leases: Generally--Oil and Gas Leases: Rentals--Statute of Limitations

Statutes of limitations directed at "any action to recover penalties" (30 U.S.C. § 1755 (1994)), or any "action for money damages" (28 U.S.C. § 2415 (a)(1994)) establishing time limits for commencement of judicial actions, initiated by the filing of a complaint in a court of competent jurisdiction, do not limit administrative proceedings within the Department of the Interior.

2. Contracts: Generally--Contracts: Construction and Operation--Indians: Mineral Resources: Oil and Gas: Tribal Leases--Oil and Gas Leases: Generally--Oil and Gas Leases: Rentals

Settlement Agreement barred lessor's recovery of amounts offset by lessee to balance overpayment of advance rentals where lessee was gas purchaser under a gas purchasing agreement, and where the Settlement Agreement unequivocally resolved this issue because the offset lessee had executed was as a gas purchaser under the gas purchasing agreement, not as a royalty payor or lessee, and these gas purchase issues were settled without question under the Settlement Agreement.

3. Indians: Mineral Resources: Oil and Gas: Tribal Leases--Oil and Gas Leases: Generally--Oil and Gas Leases: Rentals

Tribal Resolution No. 79-55 and Payor Handbook requiring Tribal oil and gas lessee to seek refunds

of advanced minimum royalties (rentals) from Tribe during periods when Tribe elected to take its royalty gas in-kind, did not preclude lessee from effecting offset of refund monies due lessee with monies due Tribe under Royalty Gas Gathering and Exchange Agreement.

APPEARANCES: Mary Frances Edmonds, Esq., Tulsa, Oklahoma, for appellant; Michael D. Bloomquist, Esq., Office of the Solicitor, Division of Indian Affairs, U.S. Department of the Interior, Washington, D.C., for the Bureau of Indian Affairs and the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Williams Production Company (Williams or appellant) has appealed from a March 11, 1997, decision of the Deputy Commissioner of Indian Affairs (Decision), upholding that part of a November 23, 1994, Minerals Management Service (MMS) order (Order) and accompanying bill requiring Williams to repay \$49,577.09 withheld to offset overpaid advance rentals, which MMS claimed were unauthorized recoupments not taken in accordance with Tribal procedures.

Williams is the lessee of five Jicarilla Apache tribal leases 1/ which provided that the lessee pay royalty in value or in kind (RIK) at the Jicarilla Tribe's (Tribe) request. See paragraph 4(c) of the leases. Williams acquired the leases from Northwest Pipeline Corporation (Northwest) on January 1, 1991. The record reflects that in 1975, while Northwest held the leases, the Tribe entered into a Royalty Gas Gathering and Exchange Agreement (GPA) with Northwest and another producer, El Paso Natural Gas Company (El Paso), by which Northwest and El Paso would purchase back the gas given to the Tribe as RIK under payment terms defined in the GPA. See Decision at 1. In July 1978, the U.S. Geological Service (USGS) notified Northwest and El Paso that the Tribe had elected to take its payment through RIK rather than by royalty in value. In Jicarilla Tribal Resolution No. 79-55 (Resolution 79-55), which USGS provided to the lessees at that time, Northwest and El Paso were further advised

that the Treasurer of the Tribe shall refund to any lessee, upon a written request of such lessee, the amount of annual advance minimum royalties or portions thereof paid on a lease, not offset by royalty payments, when payments received by the Tribe from sale of inkind oil and gas and royalties, if any, exceed the amount of such annual advance minimum royalties.

(Resolution 79-55, final paragraph.)

Pursuant to Resolution 79-55, Williams requested refunds of \$35,661.67 and \$13,915.42 in advance annual rentals by letters dated

1/ Jicarilla Tribal Lease Nos. 609-000060-0, 609-000061-0, 609-000081-0, 609-000092-0, and 609-000093-0.

April 18, 1983, to the Royalty Management Program, and July 13, 1984, to the Tribe. (Appellant's Statement of Reasons (SOR), Exhs. 3 and 5.) In 1984, MMS concluded in letters addressed to the Tribe that "sufficient royalty in-kind gas ha[d] been taken by the [Tribe] to absorb" the advance rentals paid and "recommend[ed]" that the Tribe "refund" various amounts of advance royalties. See SOR, Exh. 4.

Despite various communications between Williams and the Tribe and a June 1985 telephone commitment by David Wong of the Tribe to remit the total outstanding amount of Advance Rental refunds due appellant during the second week of August 1985 (see Exh. 9 to SOR), the refunds were not made. Appellant then sent a letter by certified mail dated March 4, 1986, to the Tribe's Oil and Gas Administrator which demanded payment of refund requests totaling \$49,577.09 "or any other response" by March 20, 1986. The Tribe did not respond or pay the amount alleged due. On March 25, 1986, Northwest set-off \$49,577.09 from the February 1986, gas payment for gas purchased from the Tribe pursuant to the Gas Purchase Agreement. (SOR at 3.)

Effective January 1, 1989, the Tribe and Northwest entered into a "Settlement Agreement" to resolve disputes between "Northwest and the Tribe as to the interpretation of the [GPA] with respect to Northwest's obligation to purchase the royalty gas gathered by Northwest." (Settlement Agreement at 1.)

On November 23, 1994, MMS issued its order requiring Williams inter alia, to repay \$55,889.03 "to bring rental payments into compliance with Tribal Resolution 79-55." Williams filed a timely appeal.

The Deputy Commissioner of Indian Affairs, in her March 1997 decision, reports that "[u]pon review of this appeal, MMS concluded that the advance lease rentals have been paid-in-full. See page 2 of the MMS Field Report dated December 5, 1995 (1995 Field Report). However, MMS continues to maintain that the appellant incorrectly recouped monies on its Form MMS-2014." (Decision at 2.)

The rationale for MMS' conclusion adopted by the Deputy Commissioner on appeal was that the recoupment was taken during a period when the Tribe was taking its royalty in-kind and both Tribal Resolution No. 79-55 and the relevant provision of the 1986 MMS Oil and Gas Payor Handbook (1986 Payor Handbook) provided that the Tribe had the sole responsibility for refunding advance rental payments based on written requests for refund to the Tribe. Thus, the Deputy Commissioner stated:

Advance rental is due on or before the anniversary date of the lease. It is recoupable against the royalty obligation incurred during the lease year. If royalty is taken in-kind, the advance rentals must be recouped in accordance with Tribal procedures. Here, any advance rentals associated with RIK [royalty in-kind] were to be recovered by submitting a refund request to the Tribe. See MMS Oil and Gas Payor Handbook,

Vol. II, pp. 3-4 and 3-13 (September 30, 1986), and Tribal Resolution No. 79-55 (September 1, 1978).

Because the Appellant bypassed the procedures established by the Tribe for obtaining refunds of advance rentals and unilaterally recouped those funds without the Tribe's consent and without first resolving the question of whether the Appellant was, in fact, entitled to such refunds, I conclude that MMS did not err in requiring the Appellant to repay the amount of the aforementioned unilateral recoupment.

(Decision at 6.) The Deputy Commissioner further rejected Williams' arguments that the order to repay the \$49,577.09 recouped in March 1986 is barred by the Settlement Agreement executed on January 1, 1989, or is barred by 28 U.S.C. § 2415 (1994). Id. at 3-5. As to \$6,311.95 recouped in April 1989, the Deputy Commissioner held Williams followed MMS procedures because at that time the Tribe was no longer taking royalty in-kind. Id. at 5-6.

On appeal to this Board, appellant maintains that (1) statutes of limitations and laches preclude MMS from requesting repayment in 1994 of advance rental recoupments between 1978 and 1988; (2) the Tribe has released all claims against Williams; and (3) Williams had the legal and equitable right to set off the unpaid advance rental recoupments, separate and apart from the remedy provided in the Handbook. (SOR at 4.)

Williams asserts that the alleged incorrect recoupment identified in MMS' November 1994 Demand Letter relates to recoupments "between 1978 and 1983," and "[a]ll of the recoupments between 1978 and 1983 indicate February 1986 as the date of recoupment." (SOR at 5.) The February 1986 date, appellant states, is indicated because "on March 25, 1986, Northwest offset \$49,577.09 from the February 1986 gas payment for gas purchased from the Tribe pursuant to the Gas Purchase Agreement since the Tribe had neglected to refund the advance rentals." Id. Appellant maintains that "[r]efunding of the \$49,577.09 which was offset in March 1986, eight years prior to the current demand, is prohibited by the applicable statutes of limitations, regulations and principles of justice and equity." (SOR at 5.)

More specifically, appellant points to the statute of limitations found in the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1755 (1994). Section 1755 states: "Except in the case of fraud, any action to recover penalties under this chapter shall be barred unless the action is commenced within six years after the date of the act or omission which is the basis for the action." Appellant asserts that the "broad and pervasive intent of Congress in enacting this statute of limitations provision is explained in 1982 U.S. Code Cong. and Adm. News at 4268 which indicates that any action under FOGRMA must commence within six years of the act or omission, except in the case of fraud." (SOR at 5.) Giving meaning to the statute in a manner consistent with existing law and the clearly expressed intent of Congress, appellant argues, results in "the only reasonable interpretation of 30 U.S.C. § 1755[.] the limitation

applies to the commencement of any action under FOGRMA." Id. Appellant contends that Congress' intent to require all actions to be brought within 6 years of a violation is further supported by the requirement that a record be maintained only for 6 years after the record is generated. See 30 U.S.C. § 1713(b) (1994); Id. at 5-6. Because there is no allegation of fraud in this case, MMS is now barred from recovering the recoupment under 30 U.S.C. § 1755 (1994), appellant reasons.

Second, appellant asserts MMS is barred from recovering the alleged recoupment by 28 U.S.C. § 2415(a) (1994). Appellant urges that MMS is seeking to recover money damages from Williams under its lease contracts. Responding to authority cited by the Deputy Commissioner to the effect that the statutes of limitations do not apply to administrative actions, appellant argues this case can be distinguished, maintaining that it involves "the recoupment of advance rental payments, not royalties" and that the "government agency now prosecuting the disgorgement of the recoupment had already, in written correspondence referenced in Exhibit 4 demonstrated the Appellant's entitlement to the recoupment of the money now at issue." (SOR at 7.) Appellant adds that the 10th Circuit's position that 28 U.S.C. § 2415(a) applies to mineral lease claims by MMS is controlling here as the leases are situated in New Mexico and the lessee in Utah and Oklahoma, all within the jurisdiction of the 10th Circuit. See Phillips Petroleum Co. v. Lujan, 4 F.3d 838 (10th Cir. 1993). Conversely, appellant asserts that the 5th Circuit's holding in the Phillips Petroleum Co. v. Johnson, No. 93-1377 (5th Cir., September 7, 1994), a case holding that 28 U.S.C. § 2415(a) does not apply to a claim by MMS for royalties under a mineral lease, is not controlling authority in this case. (SOR at 8.)

Counsel for the Bureau of Indian Affairs argues in its Answer that numerous Board decisions, including Anadarko Petroleum Corp., 122 IBLA 141 (1992), and BHP Petroleum (Americas) Inc., 124 IBLA 185 (1992), have held that neither statute of limitations applies to administrative actions. (Answer at 4.)

[1] Williams' attempt to distinguish this case from Board cases holding that statutes of limitations do not apply to administrative proceedings fails because the distinction drawn between the recoupment of advance rental payments and royalties does not address the reason why administrative proceedings are generally not subject to statutes of limitations, i.e., statutes of limitations establish time limits for commencement of judicial actions, actions initiated by the filing of a complaint in a court of competent jurisdiction. 30 U.S.C. § 1755 (1994) and 28 U.S.C. § 2415(a) (1994) are both directed at "action[s]." The former is directed at "any action to recover penalties" and the latter any "action for money damages." Thus, even if circumstances gave rise to the operation of either statute of limitations in this case, 2/ the statutes of limitations at

2/ 30 U.S.C. § 1755 addresses a "penalty under [FOGRMA]." There has been no showing that the recoupment sought herein is a "penalty under [FOGRMA]." Section 3 of FOGRMA, as amended, defines a "penalty" as "a statutorily

issue are not applicable and do not limit administrative proceedings within the Department of the Interior conducted to determine liability and fix the amount the Government claims to be due. Marathon Oil Co., 149 IBLA 287, 290-91 (1999); Merrion Oil and Gas Corp., 147 IBLA 258, 264 (1999); Benson-Montin Greer Drilling Corp., 146 IBLA 387, 397 (1998). No meaningful distinction can be drawn between this case and the foregoing cases seeking to invoke the operation of a statute of limitations before the Board. We thus adhere to established Board precedent on this issue and find that the appellant's arguments lack merit.

[2] We next address Williams' argument that the Tribe released its \$49,577.09 claim upon execution of the January 1, 1989, Settlement Agreement between the parties which settled "any and all claims which arise and which relate to or arise under" that certain "Royalty Gas Gathering And Exchange Agreement between the Tribe and Northwest dated September 4, 1975 (Gas Purchase Agreement)." Williams states that the Settlement Agreement provides in pertinent part:

The payments made hereunder are being made as a full, final and complete compromise, adjustment and settlement of any and all transactions, agreements or courses of dealing which may have arisen or may arise and that the execution of this Settlement Agreement shall constitute a full and complete settlement of all issues between the parties.

(SOR at 8.)

Williams notes that the Tribe's set-off claim of \$49,577.09 arose in March 1986 and the Settlement Agreement was executed almost 3 years after that. It contends the Tribe was well aware of the set-off claim, having sent a demand for repayment on January 22, 1987. Northwest responded by a letter dated January 29, 1987, setting forth the reason for the set-off. The Tribe, Williams states, "never responded to Northwest's letter or pursued the matter any further." (SOR at 9.)

Williams states that the 10th Circuit in Duffy Theaters v. Griffith Consolidated Theaters, Inc., 208 F.2d 316, 323 (10th Cir. 1953), cert. denied 347 U.S. 935 (1954), held that a contract provision stating that a release was "a full and complete settlement of all claims and demands of each party against the other, of every nature and character whatsoever" must be construed to include all claims in existence at the time the contract was executed, except those specifically excluded. Williams contends that a similar broad comprehensive provision is involved in the Settlement Agreement. (SOR at 9.) The Supreme Court of New Mexico, it notes, has also held that it is bound by unambiguous language of a settlement agreement. See Burden v. Colonial Homes, Inc., 441 P.2d 210, 213 (1968). Appellant insists that the language here, which settles "any and all transactions, agreements or courses of dealing which may have arisen or may

fn. 2 (continued)

authorized civil fine levied or imposed for a violation of this chapter, any mineral leasing law, or a term or provision of a lease administered by the Secretary." 30 U.S.C. § 1702(29) (Supp. IV 1994).

arise * * *," is "unambiguous," and would bind the courts to find that "any claim the Tribe had for incorrect recoupments would have been settled as part of the Settlement Agreement and thereafter extinguished." (SOR at 9-10.)

We agree. The Settlement Agreement unequivocally resolved this issue. This is not a royalty matter. Northwest executed an offset against a payment it was to make as a gas purchaser under the GPA, not as a royalty payor or lessee. The GPA issues and disputes were settled without question under paragraphs 1.2 and 1.3 of the Settlement Agreement. See also "Whereas Clause C" of the Settlement Agreement.

[3] We also find that this is not an issue of improper recoupment on the part of appellant in violation of Tribal Resolution 79-55 or the Payor Handbook, but rather a proper case of offset under State and common law. The MMS payor system clearly sets the parameters for recoupment. The offset which occurred here, however, amounted simply to appellant keeping the RIK gas it was purchasing back under the GPA, and not paying the Tribe for that amount necessary to eliminate the advance royalty overpayment. Offset (or set-off) is allowed under common law and State law, and not precluded (or addressed) under the MMS payor system.

Our review of the record reflects that MMS itself understood that the set-off did not represent an improper recoupment of the \$49,577.09 under the MMS system. In 1996, MMS stated: Williams "is correct. The \$49,577.09 was not recouped through the MMS reporting system (emphasis in original)." See September 26, 1996, Field Report (1996 Field Report) at 2. Thus, the underpinning of the November 1994 MMS order, affirmed by the Deputy Commissioner—that the royalty payment system was violated by the recoupment—is belied by the fact that there was no recoupment under the system and MMS had itself determined this by the time it issued the 1996 Field Report. Moreover, MMS acknowledged in the 1995 Field Report that MMS has nothing to do with offset (or set-off), which is a matter between the parties. See 1995 Field Report at 4: "The right to set-off * * * has no relevancy here."

We also reject MMS' and the Deputy Commissioner's reliance on the September 30, 1986, Payor Handbook in finding the March 1986 setoff to be objectionable. Such post-dated reliance was both arbitrary and capricious, as was similar reliance upon the 1985 Tribal "policy" of limiting refunds to the 2-year written notice date, where this policy was applied retroactively to the 1983 and 1984 written requests submitted by appellant.

Finally, we must reject MMS' argument that FOGDMA allows MMS to issue an order to pay back rentals in this case. See 1996 Field Report at 3-4; see also 30 U.S.C. § 1711(c)(1) (1994). While we do not determine whether FOGDMA may support MMS' oversight of payments between purchasers and sellers in some circumstances, it does not justify an order for back rentals that are not owed. See 1995 Field Report at 2, which states that "no advance lease rentals remain unpaid and none are due."

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, MMS' November 23, 1994, order is vacated and the Deputy Commissioner's decision upholding that order is reversed.

James P. Terry
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge

